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09/839,840	04/23/2001	Gary Allan Cullis		2049

7590 06/18/2003  
Patent Administrator  
Testa Hurwitz & Thibault LLP  
High Street Tower  
125 High Street  
Boston, MA 02110

EXAMINER

HOOSAIN, ALLAN

ART UNIT	PAPER NUMBER
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2645

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/839,840

Applicant(s)

CULLIS, GARY ALLAN

Examiner

Allan Hoosain

Art Unit

2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-21 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____    |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input checked="" type="checkbox"/> Other: <i>See Continuation Sheet</i> . |

Continuation of Attachment(s) 6). Other: Advisory Action: Applicant does not have to respond to the 4/11/03 Advisory because the 4/11/03 RCE was inadvertently entered after the Advisory was issued. Also, Examiner respectfully invites Applicant to contact Examiner to discuss possible amendments for overcoming the prior art of record since initial suggestion made and discussed on 6/9/03 and 6/13/03 were not satisfactory.

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## DETAILED ACTION

### *Allowable Subject Matter*

1. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, 10-13 and 15-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Kelly, Jr.** (US 4,941,168).

As to Claim 1, with respect to Figures 6-9, **Kelly** teaches an answering machine detection method for a voice message delivery system comprising the steps of:

- (a) placing an outbound call to a recipient (Figure 6, label 104);
- (b) detecting a telephone line pick-up (Figure 6, label 108);
- (c) detecting a difference at a voice message server between an existing answering machine telephone line pick-up and a live recipient telephone line pick-up (Figure 7, label 206).

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As to Claims 2,10-12,16, **Kelly** teaches the answering machine detection method of Claim 1, wherein step (c) comprises:

- (c1) playing a prompt (Figure 7, label 210);
- (c2) listening for talk-over during the playing of the prompt (Figure 7, label 216);
- (c3) determining the telephone line pick-up was by an existing answering machine if there is talk-over during the playing of the prompt (Figure 7, label 224).

As to Claims 3,17, **Brown** teaches the answering machine detection method of Claim 2, and further comprising the steps of:

- (d) waiting for silence if the telephone line pick-up was by an existing answering machine (Figure 9, label 206);
- (e) playing a message if the telephone line pick-up was by an existing answering machine (Figure 7, label 210);
- (f) playing a message if the telephone line pick-up was by a live Recipient (Figure 9, label 210).

As to Claims 4,18, **Kelly** teaches the answering machine detection method of Claim 3, and further comprising the steps of:

- (g) detecting talk-over during playing of the message if the telephone line pick-up was by an existing answering machine (Figure 7, label 210),

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(h) restarting the playing of the message if the telephone line pick-up was by an existing answering machine and talk-over is detected during playing of the message (Figure 7, label 224).

As to Claims 5,19, **Kelly** teaches the answering machine detection method of Claim 3, wherein step (e) comprises:

(e) playing a first message if the telephone line pick-up was by an existing answering machine (Figure 6, label 122); and further wherein step (f) comprises:

(f) playing a second message different from the first message if the telephone line pick-up was by a live recipient (Figure 6, label 120);

As to Claims 6,20, **Kelly** teaches the answering machine detection method of Claim 3, wherein step (f) comprises:

(f) playing a message and playing at least one interactive option if the telephone line pick-up was by a live Recipient (Figure 9).

As to Claim 7, **Kelly** teaches the answering machine detection method of Claim 3, wherein step (f) comprises:

(f) playing at least one interactive reject option, playing a message and playing at least one interactive option if the telephone line pick-up was by a live recipient (Figure 9).

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As to Claim 8, **Kelly** teaches the answering machine detection method of Claim 1, wherein step (c) comprises:

- (c1) playing a prompt that requests a touch-tone input (Figure 9);
- (c2) listening for the requested touch-tone input (Figure 9);
- (c3) determining the telephone line pick-up was by an existing answering machine if the requested touch-tone input is heard (Figure 9).

As to Claim 13, **Kelly** teaches the answering machine detection method of Claim 2, wherein step (c1) comprises:

- (c1) playing a prompt that introduces a call to a live recipient (Figure 6, label 120).

As to Claim 15, with respect to Figures 6-9, **Kelly** teaches an apparatus for detecting an answering machine for a voice message delivery system including a call message delivery system (CDS) (TeleMail Server) connectable to a telephone communications system, wherein the CDS (TeleMail Server) operates to:

- (a) place an outbound call to a Recipient (Figure 6, label 104);
- (b) detect a telephone line pick-up (Figure 6, label 108);
- (c) detecting a difference at a voice message server between an existing answering machine telephone line pick-up and a live Recipient telephone line pick-up (Figure 7, label 206).

As to Claim 21, with respect to Figures 6-9, **Kelly** teaches an answering machine detection method for a voice message delivery system comprising the steps of:

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- (a) place an outbound call to a Recipient (Figure 6, label 104);
- (b) detect a telephone line pick-up (Figure 6, label 108);
- (c) automatically detecting a difference at a voice message server between an existing answering machine telephone line pick-up and a live Recipient telephone line pick-up (Figure 7, label 206).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly** in view of **Hamilton** (US 5,371,787).

As to Claim 9, **Kelly** teaches the answering machine detection method of Claim 1, wherein step

(c) comprises:

- (c1) playing a prompt that requests a specific input (Figure 9);
- (c2) listening for the requested specific input (Figure 9);
- (c3) determining the telephone line pick-up was by an existing answering machine if the requested specific speech input is heard (Figure 9)

**Kelly** does not teach the following limitation:

“a specific speech input”



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However, it is obvious that **Kelly** can be modified to accommodate the limitation. This is because **Kelly** teaches detecting speech (Figure 7, label 224). **Hamilton** teaches detecting speech inputs (Col. 7, lines 1-6 and 24-29). Having the cited art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add speech input capability to **Kelly's** invention for determining answering by answering machines as taught by **Hamilton's** invention in order to provide message delivery.

### *Response to Arguments*

6. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Denio et al.** (US 5,638,424) teach voice mail delivery and detecting answering machine or live recipients responses.

**Torgrim** (US 5,724,420) teaches message delivery using automatic call distributors.

**Jesurum et al.** (US 5,430,792) teach setting up calls to subscribers stations and characterizing the responses.

**Cox et al.** (US 6,396,920) teach message delivery and detection of answering machines.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

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Washington, D.C. 20231  
or faxed to:

(703) 872-9314, (for formal communications intended for entry)

Or:

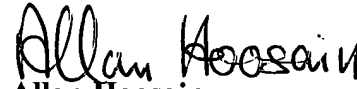
(703) 306-0377 (for customer service assistance)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the  
examiner should be directed to **Allan Hoosain** whose telephone number is (703) 305-4012. The  
examiner can normally be reached on Monday to Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, **Fan Tsang**, can be reached on (703) 305-4895.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
**Allan Hoosain**  
**Primary Examiner**  
6/13/03